IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.4634 OF 2005

Omprakash S. Pawar. ...Petitioner.
Vs.
The Union of India & Ors. ...Respondents.
....
Mr. Shyam Mehta with Satendra Kumar for the Petitioner.
Mrs. Aruna Pai for the Respondents.
.....

CORAM : A.P. SHAH AND
DR.D.Y.CHANDRACHUD, JJ.

August 17, 2005.

ORAL ORDER (PER DR.D. Y.CHANDRACHUD, J.):

Rule, by consent returnable forthwith. Counsel appearing on behalf of the Respondents waives service. By consent of Counsel and at their request taken up for hearing.

2. The Petitioner retired from the Indian Navy as a Chief Engine Room Artificer after rendering 15 years' of service. The Petitioner thereafter, sought a certificate of competency as a Marine Engineer Officer IV Class in order to seek gainful employment in the Merchant Navy. In order to obtain the certificate of competency, the Petitioner was required to follow the procedure prescribed by the Merchant Shipping (Standards of Training,

Certification of Watch Keeping for Seafarers) Rules, 1998. Each candidate in the position of the Petitioner is required to undertake courses and to pass written and oral examinations prescribed in Volume I of the Marine Education Training and Assessment (META) Manual. The Petitioner qualified in the written examinations held in the subjects of Marine Engineering Practice in November 2003; Ships Safety and Environmental Protection in December 2003; Marine Electrotechnology in April 2004; and in Ship Construction and Stability in October 2003. The Petitioner appeared for the written examinations in Marine Engineering Knowledge (General) and Marine Engineering (Motor) in November 2004, but was declared to have failed in both the papers. The Petitioner applied for revaluation on 27th December 2004. The answer papers were revalued by the Principal Officer, Mercantile Marine Department (Respondent No.3) and the Petitioner was declared upon revaluation to have passed both the papers. The Third Respondent made an endorsement in the Examination Book of the Petitioner. The Petitioner thereupon applied for the issuance of a certificate of competency as a Marine Engineer Officer IV Class on 24th February 2005. He was , however, informed by the Third Respondent that he would have to appear

for the examination in both the papers in which upon revaluation, he was declared to have passed. By a letter dated 21st April 2005, the Third Respondent informed the Petitioner that the endorsement in his Examination Book had been made inadvertently and without the prior approval of the result by the Chief Examiner of Engineers. The Petitioner was directed to resubmit his Examination Book for correction and to reappear for the examination. This action has been challenged in these proceedings.

3. On behalf of the Petitioner, it has been submitted that he has duly passed the examination requisite for obtaining a certificate of competency as MEO IV Class; in two subjects wherein he was initially declared to have failed, he was notified to have passed after revaluation; and an endorsement was made in the Examination Book. The Petitioner submitted that he is not responsible for the irregularity, if any, of the Department in not obtaining the approval of the Chief Examiner of Engineers. The Petitioner has secured employment on the basis of his having passed the examination. Hence, there was no occasion to nullify the results of the Petitioner. There is no allegation that the

Petitioner had committed any irregularity or wrongful conduct. Moreover, it has been submitted that the approval of the Chief Examiner is not mandatory under the Manual.

4. An affidavit in reply has been filed by the Deputy Director General of Shipping (Technical) in which it has been stated that after appearing for various stages of the examination for Marine Engineer Officers IV Class Part “B” between August 2002 and November 2004, the Petitioner passed in four out of six written papers. It has been stated that the Petitioner failed in two papers in the November 2004 examination. However, it has been admitted that on revaluation, the Petitioner was declared to have passed the Examination. On receipt of the application for revaluation, the answer sheets were stated to have been forwarded to the Principal Officer Mercantile Marine Department under Rule 49. The Principal Officer of each District has appointed an Examiner of Engineers to look after the day-to-day affairs of examination. The Examiner of Engineers in the Mercantile Marine Department, Mumbai, got the answer sheets revalued by another Examiner other than the Examiner who had corrected the answer sheets. The Petitioner was declared as passed after giving grace

marks. It has then been submitted that under Rule 49, the answer sheets ought to have been forwarded to the Chief Examiner of Engineers who would nominate an Examiner independent of the one who corrected the answer sheet initially, for revaluation. It has been submitted that the nomination of an independent Examiner was done directly by the Examiner of Engineers and not through the Chief Examiner of Engineers, in order to speed up the process and ensure the expeditious declaration of the result. A candidate who appears for the Examination takes, on an average, eight months to pass, during which he is away from gainful employment. Hence, an endeavour is made by the Mercantile Marine Department to reduce the time period in the interests of candidates. After the revaluation was got done by the Examiner of Engineers, the result-sheet of the Petitioner was endorsed in token of his having passed the examination and the documents were forwarded to the Director General of Shipping for preparing a certificate of competency and for the approval of the Chief Examiner of Engineers. At that stage, the Chief Examiner of Engineers revalued the papers and found that the Petitioner had failed. The result-sheet which the Petitioner has relied upon is stated to be prior to the approval of the Chief

Examiner of Engineers and it is submitted that unless the Chief Examiner of Engineers approved the result, the Petitioner would not be eligible.

5. We have heard Counsel appearing on behalf of the parties. The admitted facts in the present case are that the Petitioner applied for revaluation of his answer books in two papers in which he was declared to have failed. It is not disputed before us that revaluation is permissible under rules governing the conduct of the examination. Admittedly upon revaluation, the Petitioner was informed that he had passed the examination and an endorsement was made in his Examination Book in accordance with law. There is admittedly neither any malpractice, nor any misrepresentation by the Petition. There is not even an allegation of any wrongful conduct on the part of the Petitioner. Undoubtedly, in a case where a candidate is involved in wrongful behaviour, it would be open to the Department to take requisite disciplinary action including the recalling of a result. That is not the case here. The answer papers of the Petitioner were revalued and upon revaluation, the Petitioner was informed that he had passed the examination. There is not even a suggestion in the

affidavit that the Petitioner is guilty of any wrongful conduct and fairly no such submission has been urged during the course of the hearing. In the circumstances, the omission to obtain the approval of the Chief Examiner of Engineers cannot be relied upon to recall the result of the Petitioner which has already been declared by making an endorsement on his Examination Book. The Petitioner has obtained employment on the strength of his having passed the Examination. The impugned action of the Respondents is thus arbitrary and has to be quashed and set aside.

6. The Petition is accordingly made absolute in terms of prayer clauses (a) and (b). The communications of the Respondents dated 24th March 2005 and 21st April 2005 (Exhs.D and E) are quashed and set aside and the Respondents are directed to issue the certificate of competency to the Petitioner as a Marine Engineer Officer IV Class within a period of two weeks subject to his complying with all the other requirements. There shall be no order as to costs.

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